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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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08/904,121 07/31/97 VRZALIK

J 7838301-1988
EXAMINER

PM92/0702
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ART UNIT PAPER NUMBER
PTAM, T 27

DATE MAILED: 3627

07/02/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 4-30-99
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

BEST AVAILABLE COPY

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19 the functional recitation "said foot board assembly being adapted to articulate relative to said first section, from a resting position, when a force is applied thereto, but to increasingly resist said force with increasing degree of articulation" has not been given patentable weight because it is not fully supported by corresponding structural limitation of similar scope.

35 U.S.C. 112, sixth paragraph, states "[a]n element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof (emphasis added).

In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In re Fuller, 1929 C.D. 172; 388 O.G. 279.

As written, the functional limitation is not supported by recitation in the claim of sufficient structure to warrant the presence of the functional language and it is unclear whether or not applicant wishes the functional limitations above to be considered under 112, 6th paragraph.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,409,695 to Johnston et al. in view of U.S. Pat. No. 4,858,260 to Failor et al.

Johnston et al. disclose a bariatric bed comprising a frame adapted to support patients having weights in the range of 300-700 pounds. The frame comprises an articulated mattress support for supported a mattress including at least a first (6), second (5) and third (4) articulatable sections positioned to support a leg region, a seat region and a head region, respectively. The bed further includes an articulation mechanism (50) for articulating the mattress support from a relatively horizontal, lying position to a seated position including a head-up jack (50) and a leg-down jack (50). The bed also includes a foot board assembly and a radiolucent section (63) having a cavity (65) for the insertion of X-ray film material so as to allow radiographic examination of a patient while positioned upon the mattress support. The cavity is accessible from either side of the bed.

Johnston et al. fail to teach the bariatric bed also comprising a raise-and-lower mechanism for generally raising and lowering the entire mattress support relative to a floor engaging portion of the frame and controls for tilting the mattress support lengthwise. However, Failor et al. disclose a patient transport apparatus comprising a raise-and-lower mechanism for generally raising and lowering the support relative to a floor engaging portion of the frame and controls for tilting the support lengthwise, hence providing Trendelenburg and/or reverse Trendelenburg capabilities. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bed of Johnston et al. with a

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raise-and-lower mechanism so as to be able to raise and lower the mattress support and controls for tilting the bed lengthwise so that the bed can be placed in Trendelenburg and/or reverse Trendelenburg positions, as taught by Failor.

5. Claims 2-13, 15-19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston et al. in view of Failor et al. as applied to claim 1 above, and further in view of U.S. Pat. No. 5,205,004 to Hayes et al.

Johnston et al., as modified, disclose the claimed invention except for the raise-and-lower mechanism comprising a head end torque arm and a leg end torque arm being pivotally disposed on the frame at a first pair of later diverse points and a second pair of lateral diverse points, respectively. Hayes et al. disclose a vertically adjustable and tiltable bed frame comprising a raise-and-lower mechanism including a head end torque arm (46, 64, 42) and a leg end torque arm (48, 44) wherein each of the torque arms are independently actuatable by motor jacks (60, 62).

As concerns claim 17 and 18, the four jacks are cooperatively adapted to position the mattress support as a cardiac chair and to also facilitate patient ingress and egress over the leg region of the mattress.

As concerns claims 21 and 22, Johnston et al. also discloses the bed having a plurality of laterally adjustable side rails with one of the rails being provided with controls (57, 58) for controlling articulation of the mattress support.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston et al. in view of Failor et al. and Hayes et al. as applied to claim 3 above, and further in view of U.S. Pat. No. 5,393,938 to Bumbalough.

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Johnston et al., as modified, disclose the claimed invention except for the frame having an integral scale for determining the weight of a patient positioned upon the mattress. Bumbalough discloses, at col. 1, lines 12-20, that it is well known in the art to provide beds with scales built into the frame for weighing a person lying in the bed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bed of Johnston et al., as modified, with an integral scale so as to be able to weigh the person lying in the bed.

Allowable Subject Matter

7. Claim 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach a bed comprising a foot board assembly having a dampening member being adapted to prevent rapid returns of the foot board assembly to its resting position.

Response to Arguments

8. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 4,974,692 to Carruth et al.

U.S. Pat. No. 4,793,428 to Swersey

U.S. Pat. No. 5,275,428 to Carroll et al.

U.S. Pat. No. 5,720,059 to Allevato et al.

U.S. Pat. No. 5,608,932 to Hasegawa

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham** whose telephone number is (703) 305-7421. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Meyers, can be reached at (703) 308-3868.

Submission of your response by facsimile transmission is encouraged. Group 3620's facsimile number is (703) 305-3597. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 305-3597) on (Date)

(Typed or printed name of person signing this certificate)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to steven.meyers@uspto.gov.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist at (703) 308-2168.



TERI PHAM
PATENT EXAMINER

tqp
June 30, 1999